IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 17514 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE N.G.NANDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DAMJIBHAI LADHABHAI PATEL

Versus

COMMISSIONER SURAT

Appearance:

1. Special Civil Application No. 17514 of 2003

MR BC DAVE for Petitioner No. 1

RULE SERVED for Petitioner No. 1

MR. L.R. PUJARI, LD. AGP for Respondent No. 1-3

RULE SERVED for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE N.G.NANDI

Date of decision: 04/03/2004

ORAL JUDGEMENT

1. Mr. L.R. Pujari, learned AGP has placed on

record the affidavit in reply filed by Respondent no.1, same is kept on record.

2. Heard Mr. Kanchwala for Mr B.C. Dave for the petitioner and Mr. L.R. Pujari, learned AGP for the respondent State. In this petition under Article 226 of the Constitution of India, the petitioner has been challenging the detention order No: PCB/PASA/168/2003 dated 4-9-2003 (Annexure-A) passed by Respondent No.1 under section 3 of The Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as the "PASA Act") and prays for quashing and setting aside of the said detention order.

3. The grounds of detention (Annexure-C) suggests that 3 cases under section 380, 454, 457 and 114 of I.P. Code came to be registered against the petitioner detenu, last being on 1-1-2002. Two witness have given statement relating to the incident of 22-6-2003 and 13-7-2003 respectively alleging that the petitioner and his associates wanted the witness to accompany them for sale of stolen articles and the witnesses declined to acceded to the demand, whereupon the petitioner and his associates got enraged on the witnesses who refused to lend his vehicle for taking the stolen articles; that the petitioner and his associates ran towards the persons who had assembled there with stick, hockey etc. and the people out of fear ran away, living their vehicles on the road and because of this atmosphere of panic and terror was created and the people around were required to close down their shops confining to their houses; which led to disruption of maintenance of public order. Privilege under section 9(2) of PASA Act has also claimed as the witness apprehended danger to their person and property.

4. Challenging the order of detention it has been submitted by learned counsel for the petitioner that the acts alleged in the registered cases against the petitioner including the statements of the witnesses in unregistered cases are the offences under the provisions of the I.P. Code and the same would at the most concern maintenance of law & order and not public order.

5. As far as the registered cases and the statements of witnesses in unregistered cases are concerned the offences are under the provisions of I.P. Code against individuals. In the case of ASHOK JIVRAJ @ JIVABHAI SOLANKI Vs. POLICE COMMISSIONER, SURAT & ORS. XLI (1) GLR, pg. 816 it has been observed by the Division Bench that " four cases registered against the detenu under IPC looking to the incidents the case falls under the

maintenance of "Law & Order" and not "Public Order." Therefore, subjective satisfaction arrived by the detaining authority cannot be said to be legal or valid and the order of detention could have been passed on the ground of maintenance of "Public Order", detention order quashed. "

In the instant case, offences registered against the petitioners are under section 380, 454, 467 and 114 of I.P. Code. As far as the unregistered cases are concerned all what has been suggested from the statements recorded in the grounds of detention is that the witnesses refused to lend their rickshaw for taking the stolen articles whereupon the witnesses were given beating by the petitioner and his associates. Thus the offences alleged in unregistered case are also directed against individual under the provisions of I.P. Code.

6. It is submitted by Mr. L.R. Pujari, learned AGP that the statement of witness in unregistered cases suggests that the maintenance of public order was adversely affected in as much as on petitioner beating the witnesses the people collected and his associates with hockey and sticks ran after those persons who had come to rescue the witnesses which led to commotion and people started running away leaving their vehicles and were also required to close their business and confined to their houses closing the doors and windows of their respective houses. In the submission of Mr. Pujari this suggests maintenance of public order having been adversely affected.

In the case of MUSTAKMIYA JABBARMIYA SHAIKH Vs. M.M. MEHTA, COMMISSIONER OF POLICE & ORS, XXXVI (2) GLR pg 1268 the Supreme Court in para-7 observed as follows:-

" Para-7. The Preamble of the Act makes it clear that the object of provisions contained in the Act is to prevent the crime and to protect the society from anti-social elements and dangerous characters against perpetration of crime by placing them under detention for such a duration as would disable them from resorting to undesirable criminal activities. The provisions of the Act are intended to deal with habitual criminals, dangerous and desperate outlaws who are so hardened and incorrigible that the ordinary provisions of penal laws and the mortal fear of punishment for crime are not sufficient deterrents for them. Sec. 3 of the PASA Act is, therefore, intended to deal with such criminals

who cannot readily be apprehended to be booked under the ordinary law and who for special reasons, cannot be convicted under the penal laws in respect of the offences alleged to have been perpetrated by them. But this power under the Act to detain a person should be exercised with restraint and great caution. In order to pass an order of detention under the Act against any person the detaining authority must be satisfied that he is a "dangerous person" within the meaning of Sec. 2(c) of the PASA Act who habitually commits, or attempts to commit or abets the commission of any of the offences punishable under Chapter XVI or Chapter XVII of the Penal Code or any of the offences punishable under Chapter V of the Arms Act as according to sub-sec. (4) of Sec. 3 of the Act it is such "dangerous person" who for the purpose of Sec. 3 shall be deemed to be a person "acting in any manner prejudicial to the maintenance of public order" against whom an order of detention may lawfully be made. "

In para-8 the Supreme Court observed as follows:-

" Para-8. The Act has defined "dangerous person" in clause (c) of Sec. 2 to mean a person who either by himself or as a member or leader of a gang habitually commits or attempts to commit or abets the commission of any of the offences punishable under Chapter XVI of Chapter XVII of the Penal Code or any of the offences punishable under Chapter V of the Arms Act. The expression 'habitual' has, however, not been defined under the Act. It does not refer to the frequency of the occasions but to the invariability of practice and the habit has to be proved by totality of facts. It, therefore, fellows that the complicity of a person in an isolated offence is neither evidence nor a material of any help to conclude that a particular person is a "dangerous person" unless there is material suggesting his complicity in such cases which lead to a reasonable conclusion that the person is a habitual criminal. It, therefore, necessarily follows, that in order to bring a person within the expression "dangerous person" as defined in clause (c) of Sec. 2 of the Act, there should be positive material to indicate that such person is habitually committing or attempting to commit or abetting the commission of offences which are

punishable under Chapter XVI or Chapter XVII of I.P.C. or under Chapter V of the Arms Act and that a single or isolated act falling under Chapter XVI or Chapter XVII of I.P.C. or Chapter V of the Arms Act cannot be characterised as a habitual act referred to in Sec. 2 (c) of the PASA Act.

In para-9 Supreme Court has observed as follows:-

" Para-9. Sub-sec (4) of Sec. 3 also provides that for the purpose of Sec. 3, a person shall be deemed to be 'acting in any manner prejudicial to the maintenance of public order' when such person is a "dangerous person" and engaged in activities which affect adversely or are likely to affect adversely the maintenance of public order. It, therefore, becomes necessary to determine whether besides the person being a "dangerous person" his alleged activities fall within the ambit of the expression 'public order'. A distinction has to be drawn between law and order and maintenance of public order because most often the two expressions are confused and detention orders are passed by the authorities concerned in respect of the activities of a person which exclusively fall within the domain of law and order and which have nothing to do with the maintenance of public order. "

7. Following the principles laid down in the case of Ashok Jivraj @ Jivabhai Solanki (supra) the impugned detention order cannot be sustained, firstly on the ground that the offences alleged are directed against the individuals and the same would relate to the maintenance of ' Law & Order" and not "Public Order"; AND secondly, adversely affecting 'public order' having not been established, following the principle laid down in the case of Mustakmiya Jabbarmiya Shaikh (supra). Under the circumstances the impugned detention order is liable to be quashed and set aside.

8. In the result, the petition is granted and accordingly allowed. The impugned detention order No: PCB/PASA/168/2003 dated 4-9-2003 (Annexure-A) passed under the Prevention of Anti Social Activities Act, 1985 by Respondent no.1 is quashed and set aside. The petitioner detenu - Damjibhai Ladhabhai Patel is ordered

to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly. Direct service permitted.

Dt: 4-3-2004 (N.G. Nandi, J)

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